

SENATE BILL 2290

By Ford

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3, Part 7 and Title 66, Chapter 34, relative to nonpayment grievances by small contractors.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, Chapter 3, Part 7, is amended by adding the following new section:

4-3-739.

(a) As used in this section:

(1) "Contract" means any written agreement for the performance of work, labor or services or for the furnishing of materials, machinery or equipment, or both;

(2) "General contractor" means a person or entity that enters into a contract with a state-funded business enterprise and that is responsible to the enterprise for the supervision or performance of substantially all of the services, work or labor and the furnishing of materials, machinery or equipment in furtherance of the contract. "General contractor" includes a prime contractor;

(3) "Nonpayment grievance" means any verbal or written complaint alleging nonpayment by a state-funded business enterprise or by its general contractor or subcontractor for work, labor or services performed, or for materials, machinery, or equipment furnished;

(4) "Small contractor" means a person or entity that has less than one hundred (100) laborers, materialmen or other persons who are performing a contract, and that enters into a contract with a state-funded business enterprise

for the performance of a contract, or that enters into a contract with the enterprise's general contractor or subcontractor for the performance of any part of the general contractor's contract or for the performance of any part of the subcontractor's contract. "Small contractor" includes an electrical contractor or subcontractor, mechanical contractor or subcontractor, or plumbing contractor or subcontractor;

(5) "State-funded business enterprise" or "enterprise" means any person, firm, partnership, corporation, association, or other organization with more than five hundred (500) employees that receives or is authorized to receive state funds; and

(6) "State funds" means any funds of the state that are administered or allocated by the department of economic and community development, including any grant, loan, or loan guarantee.

(b) Any small contractor shall be permitted to report a nonpayment grievance to the office of business enterprise or other appropriate office or division of the department of economic and community development. The department shall publish on its official web site the name, address, and telephone number of the appropriate state governmental office where nonpayment grievances may be reported. The department may establish an electronic system for small contractors to report nonpayment grievances. Any small contractor reporting a nonpayment grievance pursuant to this subsection and any enterprise submitting a monthly report to the department pursuant to subsection (c) is immune from civil liability for making the grievance or report, respectively.

(c) Each state-funded business enterprise that enters directly into a contract with any general contractor, subcontractor, or small contractor shall file a monthly report with the department that shall include:

(1) The number of general contractors, subcontractors and small contractors with which the corporation is under contract;

(2) The number of any nonpayment grievances reported to the enterprise by small contractors, including the number of nonpayment grievances that have been resolved since the date the grievance was initially reported and a statement identifying whether the small contractor is a minority-owned or woman-owned business as defined in § 4-28-102; and

(3) A statement of any civil actions or arbitration proceedings instituted by any small contractor that allege breach of contract for nonpayment by the enterprise or its general contractor or subcontractor or that seek to enforce remedies against the enterprise or its general contractor or subcontractor pursuant to the Prompt Pay Act, compiled in title 66, chapter 34; provided, that the statement shall also include the disposition of any action or proceeding.

(d) The department shall, on or before February 1 of each year, prepare an annual, comprehensive report to be submitted to the commerce and labor committee of the senate and the business and utilities committee of the house of representatives compiling an analysis and summary of the information reported by each state-funded business enterprise pursuant to subsection (c) during the prior year. The report shall also state the number of all nonpayment grievances reported by small contractors that are minority-owned businesses or woman-owned businesses as defined in § 4-28-102. The reports required by this subsection and subsection (c) shall not identify any person or entity who has not been otherwise publicly identified in any civil action or proceeding, unless the person or entity consents in writing to identification.

(e)

(1) The department shall withhold, or cause to be withheld, a portion of state funds available for distribution to a state-funded business enterprise in the then current fiscal year if, during the prior fiscal year:

(A) The enterprise reported two (2) or more dispositions of civil actions or arbitration proceedings pursuant to subdivision (c)(3) that resulted in judgments or rulings in favor of a small contractor;

(B) The enterprise reported five (5) or more nonpayment grievances from separate and distinct small contractors pursuant to subdivision (c)(2); or

(C) The department received five (5) or more nonpayment grievances from separate and distinct small contractors pursuant to subsection (b).

(2) The amount withheld, or cause to be withheld, shall be equal to ten percent (10%) of the total amount awarded in the judgments or rulings, excluding attorney's fees and court costs, or ten percent (10%) of the total amount of all contracts for which nonpayment grievances were reported or received, whichever is applicable under subdivision (e)(1).

(f) The department may establish policies or guidelines or promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, governing the procedure and time frames for the intake of nonpayment grievances.

SECTION 2. This act shall take effect July 1, 2014, the public welfare requiring it, and shall apply to all contracts entered into, or renewed, on or after such date.